
A Role and activities of the ORR

The Office of Regulation Review is located within the Productivity Commission. The ORR reports to the Chairman of the Commission, who guides its work program and acts as spokesperson. The Office has significant autonomy, with its activities being quite separate from the other activities of the Commission.

The ORR's charter, which outlines the role and functions of the Office, is provided in box A.1.

Box A.1 Charter of the Office of Regulation Review

The role of the ORR is to promote the Commonwealth Government's objective of effective and efficient legislation and regulations, and to do so from an economy-wide perspective. Its functions are to:

- advise the Government, Commonwealth departments and regulatory agencies on appropriate quality control mechanisms for the development of regulatory proposals and for the review of existing regulations;
- examine RISs prepared by departments and agencies and advise on whether they meet the Government's requirements and whether they provide an adequate level of analysis;
- provide training and guidance to officials to assist them in meeting the requirements to justify regulatory proposals;
- report annually on compliance with the Government's guidelines, and on regulatory reform developments more generally;
- provide advice to Ministerial Councils and national standard-setting bodies on COAG guidelines which apply when such bodies make regulations;
- lodge submissions and publish reports on regulatory issues having significant economic implications; and
- monitor regulatory reform developments in the States and Territories, and in other countries, in order to assess their relevance to the Commonwealth.

These functions are ranked in order of the Government's priorities, and the ORR must concentrate its limited resources where they will have most effect.

While maintaining an economy-wide perspective, the ORR is to focus its efforts on regulations, which restrict competition or which affect (directly or indirectly) businesses. The ORR is to ensure that particular effects on small businesses of proposed new and amended legislation and regulations are made explicit, and that full consideration is given to the Government's objective of minimising the paperwork and regulatory burden on small business.

The ORR (together with the Treasury) is to advise the Assistant Treasurer, in his role as the Minister responsible for regulatory best practice, and the Minister for Financial Services and Regulation with respect to legislation review matters.

The ORR's main role is to promote processes that, from an economy-wide perspective, lead to effective and efficient legislation and regulations. The ORR's main activities in 1998-99, with reference to each function specified in the charter, are outlined in this appendix.

A.1 Advise on quality control for regulation making and review

These activities can be characterised as the development and implementation of general guidelines or frameworks designed to achieve more effective and efficient legislation and regulations. Activities of this nature undertaken in 1998-99 included:

- ORR's continuing role in providing advice to agencies in relation to the Commonwealth's legislation review program;
- meeting with the Senate Standing Committee on Regulations and Ordinances;
- advising the Assistant Treasurer;
- liaison with key departments with regulatory management roles;
- providing assistance to Treasury in relation to the Self-regulation Taskforce; and
- the publication of the second edition of *A Guide to Regulation* (the Guide).

Legislation reviews

In relation to reviews under the Commonwealth Legislation Review Schedule, the ORR's role is to provide guidance to departments and regulatory agencies on appropriate terms of reference, and the composition of review bodies (see chapters 1 and 4).

To assist departments to meet the Government's requirements, the ORR has developed template terms of reference, which it provides to departments in the early development phases for their reviews (see box A.2). The template draws together the various elements of the *Competition Principles Agreement* (CPA) and reflects the Government's broader review requirements. These template terms of reference have been structured to provide an analytical framework for the reviews. They are based on the cost-benefit analysis underlying RISs, which is fundamental to the best practice approach to regulatory review and reform. Departments have been encouraged to adapt the template to fit the specific requirements of matters subject to review.

Box A.2 The template terms of reference

1. The [legislation], and associated regulations, are referred to the [Review Body] for evaluation and report by [date]. The [Review Body] is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.
2. The [Review Body] is to report on the appropriate arrangements for regulation, if any, taking into account the following:
 - (a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can be achieved only by restricting competition. Alternative approaches which may not restrict competition include quasi-regulation and self-regulation;
 - (b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;
 - (c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication;
 - (d) there should be explicit assessment of the suitability and impact of any standards referenced in the legislation, and justification of their retention if they remain as referenced standards; and
 - (e) compliance costs and the paper work burden on small business should be reduced where feasible.
3. In making assessments in relation to the matters in (2), the [Review Body] is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the *Competition Principles Agreement*. The report of the [Review Body] should:
 - (a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the [legislation] seeks to address;
 - (b) clarify the objectives of the [legislation];
 - (c) identify whether, and to what extent, the [legislation] restricts competition;
 - (d) identify relevant alternatives to the [legislation], including non-legislative approaches;
 - (e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of [legislation] and alternatives identified in (d);
 - (f) identify the different groups likely to be affected by the [legislation] and alternatives;
 - (g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

(Continued next page)

Box A.2 (continued)

- (h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and
 - (i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the [legislation] and, where it differs, the preferred option.
4. In undertaking the review, the [Review Body] is to advertise nationally, consult with key interest groups and affected parties, and publish a report.
 5. In undertaking the review and preparing its report and associated recommendations, the [Review Body] is to note the Government's intention to announce its responses to the recommendations, after obtaining advice from [the Secretary/Minister] and, where appropriate, after consideration by Cabinet.

Meeting with Senate Committee

In March 1999, the Chairman of the Productivity Commission and senior officials from the ORR met with the Senate Standing Committee on Regulations and Ordinances (SSCRO). The meeting was convened to exchange information and to improve mutual understanding of the role and functions of each body. SSCRO scrutinises delegated legislation to ensure compliance with high standards of personal rights and parliamentary propriety. In reporting to the Senate on the meeting, the then Chairman of SSCRO, Senator Bill O'Chee, commented on the value of the best practice regulatory processes and in particular the benefits of RISs. He stated:

The Committee has found the RIS to be of considerable assistance in its scrutiny of legislative instruments ... [and to] have enhanced the ability of the Committee to carry out its functions.

The Committee has found RIS[s] to be particularly useful because they are more detailed and thorough than Explanatory Statements in their background information ... problems are often set out with admirable frankness not usually seen in Explanatory Statements (Senate, Australia 1999, p. 6276).

Advising the Assistant Treasurer

The Assistant Treasurer has responsibility for regulatory performance including the promotion of compliance with the Governments' best practice processes.

The ORR keeps the Assistant Treasurer informed of any significant regulatory developments or issues associated with compliance with RIS requirements. In

certain cases where departments and agencies are not adequately meeting the Government's RIS requirements, or where the ORR anticipates lodging a 'negative' coordination comment on a Cabinet submission proposing regulation, the ORR may advise the Assistant Treasurer, who may choose to intervene if necessary.

Liaison with key departments with regulatory management roles

The Treasury, Department of Prime Minister and Cabinet and the Office of Small Business within the Department of Employment, Workplace Relations and Small Business, all have important roles in overseeing the implementation of the regulation reform agenda.

The ORR liaises on a regular basis with the Structural Reform Division of Treasury. The Division is responsible for policy advice on reform issues in key infrastructure industries, as well as on competition policy and laws. The latter includes the coordination of the implementation of National Competition Policy (including the Commonwealth's Legislation Review Schedule).

On a more *ad hoc* basis, the ORR also maintains contact with the Department of Prime Minister and Cabinet, in particular the Industry and Environment Division. The responsibilities of this Division include competition policy and intergovernmental relations (encompassing matters relating to the Council of Australian Governments (COAG)).

During 1998-99, the ORR provided advice and assistance to the Office of Small Business in relation to the development of the regulatory plans and regulatory performance indicator (RPI) initiatives (see A.4 below and chapter 1) which the Office has primary responsibility for implementing.

Self-Regulation Task Force

As part of the Commonwealth Government's commitment to encourage industry to develop effective self-regulation approaches, in August 1999 the Minister for Financial Services and Regulation announced the establishment of a taskforce to inquire into the operation of industry self-regulation in Australia and to identify best practice. The ORR provided advice to Treasury on draft terms of reference for the inquiry and on the membership of the taskforce.

A Guide to Regulation

Another significant ORR activity during 1998-99 was the publication in December 1998, and subsequent wide dissemination, of the second edition of *A Guide to Regulation*. The Guide is a reference document on good regulatory practice for those developing and assessing policy options (see discussion below).

A.2 Advise on regulatory impact analysis

A key function of the ORR is liaising with departments and agencies on the Government's requirements for regulation impact analysis (see chapter 1), and on how to comply with these requirements.

In undertaking this role, the ORR seeks to ensure that it provides timely and constructive feedback. Those occasions when it was not able to offer a standard of service which met agencies' expectations were typically cases where the preparation of a RIS had been commenced too late in the policy process.

Chapter 2 of this volume provides information on the level of regulatory activity and the extent of compliance with the Government's requirements in 1998-99 and chapter 3 suggests measures that might be taken to improve compliance.

During 1998-99, ORR officers worked intensively with some agencies to try and strike a balance between ensuring that the Government's regulatory best practice requirements were met without unduly impeding the agencies in their day-to-day activities. In this regard, particular attention has been given to the Department of Agriculture, Fisheries and Forestry — Australia, the Australian Quarantine and Inspection Service; the Civil Aviation Safety Authority; the Federal Office of Road Safety (now part of the Australian Transport Safety Bureau) and the Australian Communications Authority.

Also, over the past year, in response to issues raised by agencies and questions raised within the office, the ORR has sought to clarify whether certain types of proposals should require a RIS. While the ORR has always sought to provide appropriate advice, it is only over time, and with experience, that it has become possible to clearly delineate when RISs are required for certain 'grey areas'. The result has been clarification of some issues which have been contentious (see box A.3). It has also meant that RISs are no longer being required in circumstances that in the past were interpreted as requiring a RIS. In retrospect, some agencies have had to bear an extra burden as a consequence of this learning process. However, agencies will benefit from the greater clarity provided to the criteria and this should,

ultimately, result in the more effective allocation of agency resources and increased compliance.

Box A.3 Clarifications

- Where regulatory frameworks exist with *clear criteria*, RISs are not required for any product of that regulation, for example, licences, orders and decisions. However, where instruments arising out of primary regulation are themselves regulatory in nature — for example, management plans — these will continue to require a RIS.
- A RIS is not required where a proposal substantially adopts recommendations from a recent review which in effect (if not explicitly) adequately addresses the elements of the RIS, and
 - the report of the review is publicly available, and
 - there are no proposed changes additional to those covered in the review.

During 1998-99, the ORR also provided advice on the adequacy of a RIS, covering standards for gas appliances and installations, prepared by the Victorian Office of Gas Safety and a private consultant. The Victorian *Subordinate Legislation Act 1994* requires that independent advice be sought to confirm that RISs adequately meet the requirements contained in the Act. The task served as a useful check on the comparative standard of RISs between Victoria and the Commonwealth.

A.3 Provide training and guidance to officials

Over 1998-99, the ORR continued its program of training and briefings to departments and agencies, with the aim of assisting them to enhance processes for the development and review of regulatory proposals. As in previous years, this training covered the reasons for the Government's requirements and the features of a RIS, but in many cases extended to more tailored and detailed presentations on particular elements of the RIS or regulatory issues of specific interest to a department or agency. Over the course of the year, such presentations were made to over 350 Commonwealth officials. Participants ranged across all levels, including senior executives, and reflected diverse experience and qualifications. The ORR also participated in a number of RPI workshops hosted by the Office of Small Business. The ORR's presentations focused on the RIS process and its relationship to the Government's RPI initiative.

In addition to these more formal general training presentations, the ORR is also able to provide advice and guidance to agencies as particular issues arise, through

meetings or more tailored assistance in the preparation of specific RISs. The ORR has also found Interdepartmental committees to be effective fora for providing guidance on issues that are of interest to a number of agencies — such as the application of RIS requirements to reviews of regulation under the *Trans-Tasman Mutual Recognition Arrangement*.

Over 2000 copies of the Guide have been distributed. The Guide has been accessed on the Productivity Commission's web site (<http://www.pc.gov.au/orr/reguide2/index.html>) some 850 times.

The ORR also liaises with a range of non-government bodies with an interest in regulatory issues and ORR staff make presentations to conferences and interested groups. The Chairman of the Productivity Commission also gave an address on best practice regulation to a conference organised by the Electricity Supply Association of Australia Limited.

A.4 Report on compliance and on regulatory reform developments

Regulation and its Review 1998-99 is part of the series of publications associated with the Productivity Commission's Annual Report and meets the Commission's requirement to report on compliance with the Commonwealth Government's RIS requirements. This year, for the first time, disaggregated compliance information has been reported at the departmental and agency level (see chapter 2 and appendix B). In addition, the ORR monitors and reports on the progress and outcomes of the Commonwealth's legislation review program (see chapter 4).

The Chairman wrote to departmental secretaries and agency heads in October 1998 to inform them that the Commission would be assessing compliance with RIS requirements and reporting aggregate information in *Regulation and its Review 1997-98*. The letters also provided secretaries, on a confidential basis, with the ORR's qualitative assessment of their department's/agency's compliance performance and suggestions for how that performance could be improved. In addition, the letters foreshadowed that this year's report would publish compliance details for individual departments and agencies.

As noted in chapter 1, the Office of Small Business is required to report annually on the performance of departments and regulatory agencies against a set of nine RPIs. The first report will be for the 1998-99 financial year. The ORR has particular responsibility for monitoring performance indicators one, two and eight (see table A.1).

Table A.1 Regulatory performance indicators

<i>Key Objective</i>	<i>Performance indicators</i>
To ensure that all new or revised regulation confers a net benefit on the community.	<p>1. Proportion of regulations for which the Regulation Impact Statement (RIS) adequately addressed net benefit to the community. <i>This indicator would be monitored by the ORR.</i></p>
To achieve essential regulatory objectives without unduly restricting business in the way in which these objectives are achieved.	<p>2. Proportion of regulations for which the RIS adequately justified the compliance burden on business. <i>This indicator would be monitored by the ORR.</i></p> <p>3. Proportion of regulations which provide businesses and stakeholders with some appropriate flexibility (as defined) to determine the most cost-effective means of achieving regulatory objectives. A regulation would be regarded as providing flexibility if it had one or more of the following attributes:</p> <ul style="list-style-type: none"> • it set a performance or outcome-based standard without prescribing in detail steps which businesses must take in order to comply; or • it included provision for businesses to seek acceptance of an alternative compliance mechanism to that prescribed in regulation; or • it used a market-based mechanism such as tradeable permits to allow businesses flexibility in determining a compliance strategy; or • it incorporated any other means to ensure that businesses have flexibility in deciding what steps to take to comply with regulation.
To ensure that regulatory decision-making processes are transparent and lead to fair outcomes.	<p>4. Proportion of cases in which external review of decisions (as defined) led to a decision being reversed or overturned. External review for these purposes is limited to processes with the following characteristics:</p> <ul style="list-style-type: none"> • review is carried out by a judicial body or any other review body which is either separate from the department or agency which made the decision or is set up by legislation and has a function of reviewing decisions made by the department or agency; • the review body is empowered to reverse or overturn the decision; and • the department or agency is a party to the review. <p>5. Proportion of regulatory agencies whose mechanisms for internal review of decisions meet standards for complaints handling outlined in <i>Principles for Developing a Service Charter</i>, published by the Department of Finance and Administration.</p>

(Continued next page)

Table A.1 (continued)

<i>Key Objective</i>	<i>Performance indicators</i>
To ensure that information and details on regulation and how to comply with it are accessible and understood by business.	6. Proportion of regulatory agencies having communications strategies for regulation, or formal consultative channels for communicating information about regulation. <ul style="list-style-type: none"> • Guidelines for this purpose should be documented.
To create a predictable regulatory environment so business can make decisions with some surety of future environment.	7. Proportion of regulatory agencies publishing an adequate forward plan for introduction and review of regulation. An adequate forward plan for regulation should include the following elements: <ul style="list-style-type: none"> • it should be published in a way which makes it readily accessible to the business community; for example in an annual report, on the Internet, or by distribution to relevant business organisations; • it should outline planned or likely regulatory activity ... expected to occur within a specified period, and should be published before that period starts; • it should include information about reviews of legislation to be undertaken in the relevant period, including reviews underway at the beginning of the period; • it should include information about policy development processes which will be taking place during the relevant period which could affect business regulation, where information about those processes is publicly available; • it should include information about Government decisions to develop or implement legislation during the relevant period to the extent where those decisions have been publicly announced.
To ensure that consultation processes are accessible and responsive to business and the community.	8. Proportion of regulations for which the RIS included an adequate statement of consultation. <p><i>This indicator would be monitored by the ORR.</i></p> 9. Proportion of regulatory agencies with organisational guidelines outlining consultation processes, procedures and standards. <ul style="list-style-type: none"> • Guidelines for this purpose should be documented.

Source: DEWRSB 1999.

The RPI objectives outlined in table A.1 are consistent with a checklist for best practice regulatory design compiled by the ORR (see box A.4). The checklist draws mainly on the principles enunciated in the Guide and the COAG Guidelines, but also takes into account principles of good regulatory design identified by a number of other bodies, including the Victorian Office of Regulation Reform, the Organisation for Economic Co-operation and Development and the United Kingdom Regulatory Impact Unit.

Box A.4 A checklist for best practice regulatory design

Regulations that conform to best practice design standards are characterised by the following seven principles and features.

1. Set to the minimum necessary
 - (a) Kept simple to avoid unnecessary restrictions
 - (b) Targeted at the problem to achieve the objectives
 - (c) Not imposing an unnecessary burden on those affected
2. Not unduly prescriptive
 - (a) Performance and outcomes focused
 - (b) General rather than overly specific
 - (c) Flexible enough to allow business some freedom to find the best way to comply
3. Accessible, transparent and accountable
 - (a) Readily available to the public
 - (b) Easy to understand
 - (c) Fairly and consistently enforced
 - (d) Some flexibility for dealing with special circumstances
 - (e) Open to appeal and review
4. Integrated and consistent with other laws
 - (a) Addressing a problem not addressed by other regulations
 - (b) Recognises existing regulations and international obligations
5. Communicated effectively
 - (a) Written in 'plain language'
 - (b) Clear and concise
6. Mindful of the compliance burden imposed
 - (a) Proportionate to the problem
 - (b) Set at a level that minimises costs
7. Enforceable
 - (a) Providing the minimum incentives needed for reasonable compliance
 - (b) Able to be monitored and policed effectively, given the available resources

A.5 Advise Ministerial Councils and national standard-setting bodies

Under the COAG *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* (COAG Guidelines), the ORR has a role in providing advice and assistance to Ministerial Councils and national standard-setting bodies on the preparation of RISs for regulatory proposals. The ORR also monitors compliance with the requirements of the COAG Guidelines. Chapter 2 included a report on compliance in 1998-99.

On two occasions during the year, the ORR contacted the secretariats of Ministerial Councils to remind them of the COAG requirements and to provide information on compliance for last year.

A.6 Prepare reports and submissions on regulatory issues

The ORR's charter requires it to concentrate its limited resources where they will have most effect. The expanding workload associated with advising agencies on the adequacy of RISs has required the Office to curtail its research and publication program in the last couple of years. Apart from last year's annual report (*Regulation and its Review 1997-98*), the only other ORR publication in 1998-99 was the second edition of *A Guide to Regulation*.

The Guide, revised to incorporate the Government's response to the recommendations of the Interdepartmental Committee report *Grey-Letter Law*, was published in December 1998. It is designed to assist officials working on the review of existing regulation or proposals for new or amended regulation. The Guide explains the Commonwealth's best practice requirements and how the processes — in particular the use of RISs — can lead to better regulatory outcomes.

During the year the ORR also provided comments to the Australian Taxation Office (ATO) to assist with the preparation of *ATO Guidelines for the Preparation of Regulation Impact Statements*. The publication, which focuses on making compliance cost estimates, was released in September 1998.

The ORR continues to contribute to various Productivity Commission inquiries dealing with regulatory issues. For example, assistance was provided during 1998-99 to the inquiries on: *Broadcasting; Impact on Competition Policy Reforms on Rural and Regional Australia*; and *Progress in Rail Reform*.

A.7 Monitor regulation reform developments around Australia and internationally

The ORR collaborates in several ways with officials in regulatory reform agencies in all States and Territories. Activities in 1998-99 included:

- In April 1999, the ORR co-organised the annual meeting of Commonwealth and State/Territory regulatory reform officials hosted by the Victorian Department of State Development, Office of Regulation Reform. Issues of significance and mutual interest were discussed, including: the Victorian Law Reform Committee's inquiry into *Regulatory Efficiency Legislation*; and regulatory budgeting.
- Participation (when appropriate) in meetings of the Commonwealth-State Committee on Regulatory Reform (a COAG committee of officials).

A brief summary of developments in the States and Territories forms appendix D of this report.

The ORR also keeps abreast of relevant developments in other countries. The Office has actively participated in the OECD's work of monitoring and promoting regulatory reform in member countries. Information is exchanged mainly through the Public Management Service within the OECD Secretariat. Copies of ORR publications are sent to the OECD and the ORR receives relevant papers prepared by member countries or the secretariat. Appendix E provides information on selected OECD developments in 1998-99.

Australia has been amongst the leaders in regulatory reform efforts and the implementation of review processes. For this reason, the ORR regularly receives requests for information and advice from overseas officials and visiting delegations — progress in Australia has been of particular interest to other countries operating under a federal system of government. At the same time, Australia can learn from overseas best practice, so the ORR continues to monitor international developments, particularly in those countries with the greatest commitment to reform. Major activities in relation to international liaison and monitoring during 1998-99 are included in table A.2.

Table A.2 Major international liaison and monitoring activities of the ORR

<i>Month / Year</i>	<i>Activity</i>
July 1998	The ORR provided a briefing to four visiting officials from the Republic of South Africa. The ORR subsequently (January 1999) provided a week of training to an officer from South Africa's National Small Business Regulatory Review. South Africa is seeking to implement best practice regulatory processes to reduce the compliance burden on small business and has been keen to gain a better understanding of processes in Australia.
July – September 1998	The ORR provided assistance with Australia's contribution to an OECD multi-country survey of small businesses. The survey focused on measuring and comparing business compliance costs in meeting taxation, environmental and employment regulatory requirements. Australia's contribution was a collaborative project undertaken with the Office of Small Business and the Australian Chamber of Commerce and Industry.
July - October 1998	The ORR contributed to an OECD project on developing indicators of regulatory capacities in member countries — intended to enhance the capacity of OECD members to self-assess progress in regulatory reform by improving cross-country comparisons.
September 1988	A representative from the New Zealand Ministry of Commerce visited the ORR to discuss both countries' experience with RISs and to explore ways in which they might work more closely together in contributing to OECD regulation review and reform work.
March 1999	The head of the ORR represented Australia at the meeting of the OECD Ad Hoc Multidisciplinary Group on Regulatory Reform in Paris and then travelled to Brussels to meet with European Union officials from several directorates.
May 1999	The Counsellor (Economic) from the Embassy of Korea was given a briefing on the ORR's role and activities and the Government's policy on regulatory best practice and the head of the ORR later met with a visiting adviser to the Prime Minister of Korea.
June 1999	The head of the ORR met with an economic councillor from the Japanese Embassy.
